

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

WEALTH TAX REFERENCE No 98 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No

COMMISSIONER OF WEALTH-TAX

Versus

JAYKRISHNA HARIWALLABHDAS (HUF)

Appearance:

MR. PRANAV G. DESAI with MR MANISH R BHATT for Petitioner
Respondent No. 1 served.

CORAM : MR.JUSTICE R.K.ABICHANDANI and

MR.JUSTICE A.R.DAVE

Date of decision: 23/01/98

ORAL JUDGEMENT : [Per : R.K. Abichandani, J.]

1. The Income Tax Appellate Tribunal has referred the following question for the opinion of this Court under Section 27(1) of the Wealth Tax Act :

"Whether, the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to accept the valuation given by the assessee whereby the advance tax paid by the company and shown in the balance sheet as an asset was treated as liability?

2. The Tribunal dismissed the Appeal of the Revenue holding that there was no substance in the objection raised by the Department in view of the decision of this High Court in the case of ASHOK K. PARIKH v. CWT, reported in 129 ITR 46. In Ashok K. Parikh (supra), in which this Court had taken a view, while construing clauses (i)(a) and (ii)(e) of Explanation II to Rule 1D, that for the purpose of computation of the market value of the equity shares of a company, the advance tax paid under Section 210 of the Income Tax Act, 1961 and shown on the assets side of the balance sheet of the company, cannot be deducted from the tax payable, in determining whether the provision for taxation is in excess over the tax payable with reference to the book profits in accordance with the law applicable thereto within the meaning of clause (ii)(e) of Explanation-II to Rule 1D of the said Rules.

3. The dispute centres around the treatment to be given to the advanced tax paid shown on the assets side of the balance-sheet of the company while working out the value of the equity shares on break-up value method. At the time of making of Reference, this question was pending before the Apex Court. Now, we have the benefit of the decision of the Apex Court in BHARAT HARI SINGHANIA v. C.W.T., reported in 207 ITR 1. The Supreme Court while construing the provisions of Rule 1D of the Wealth Tax, 1957, held that the said Rule was required to be followed in every case where unquoted equity shares of a company (other than an investment company or a managing agency company) have to be valued and that all the authorities under the Act including the Valuation Officer were bound by the said Rule. It was further held that while valuing the unquoted equity shares under Rule 1D, no deductions on account of capital gains tax which would have been payable in case the shares were sold on the valuation date can be made. Similarly, no other deductions including provision for taxation, provident fund and gratuity are admissible. It was held that Rule 1D was exhaustive on the subject.

4. The Supreme Court while construing the provisions of the said Rule 1D read with Explanation -II (ii)(e) of

the said Rule held that truly speaking, the advance tax paid is not really an asset but the proforma of balance sheet in Schedule-VI to the Companies Act requires it to be shown as such. It was held that what clause (i)(a) of the said Explanation did was to remove the said amount from the list of assets for the purpose of Rule 1D. It is then that clause (ii)(e), which speaks of liabilities, says that only that amount which is still remaining to be paid shall be treated as a liability on the valuation date. If in the provision for taxation made in the column of liabilities in the balance sheet, the amount of advance tax already paid is again shown as a liability, it will not be treated as a liability. The advance tax paid had already gone out of the profits and been debited in the account books of the company. It was held that this was the true function of both the sub-clauses. The Supreme Court in the process accepted the view of Andhra Pradesh, Karnataka, Punjab & Haryana High Courts and differed from the view taken by the Gujarat High Court in C.W.T. v. Ashok K. Parikh (supra).

5. In view of the decision of the Supreme Court in Bharat Hari Singhania v. C.W.T. (supra), we hold that the Tribunal was in error in directing the Assessing Officer to accept the valuation given by the assessee whereby the advance tax paid by the company and shown in the balance sheet as an asset was treated as liability. The question referred to us is accordingly answered in negative in favour of the Revenue and against the Assessee. The Reference stands disposed of accordingly with no order as to costs.

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